

State of Arizona
House of Representatives
Forty-fifth Legislature
Second Regular Session
2002

CHAPTER 47

HOUSE BILL 2059

AN ACT

AMENDING SECTIONS 3-102 AND 3-301, ARIZONA REVISED STATUTES; RENUMBERING SECTION 3-306, ARIZONA REVISED STATUTES, AS A NEW SECTION 3-302; AMENDING SECTIONS 3-367, 3-607, 3-1201, 3-2151, 3-2907 AND 44-1522, ARIZONA REVISED STATUTES; REPEALING SECTIONS 3-302 THROUGH 3-305 AND 3-1482, ARIZONA REVISED STATUTES; RELATING TO THE DEPARTMENT OF AGRICULTURE.

(TEXT OF BILL BEGINS ON NEXT PAGE)



Be it enacted by the Legislature of the State of Arizona:

Section 1. Section 3-102, Arizona Revised Statutes, is amended to read:

3-102. Department organization

A. The Arizona department of agriculture is established consisting of the following divisions:

1. The animal services division which is responsible for milk, dairy, livestock and aquaculture regulation, the state veterinarian, meat, poultry and egg inspection and performing the administrative functions authorized or contracted pursuant to law for the Arizona beef council.

2. The plant industries division which is responsible for the fruit and vegetable standardization program, entomological services and native plant protection.

3. The environmental services division which is responsible for regulating seed, feed, hay and feed brokers and agricultural chemicals, including pesticides and fertilizers.

B. The following are established in addition to and separate from the divisions of the department:

1. A state agricultural laboratory.

2. An office of agriculture safety.

3. An office of inspections.

4. An office of commodity development and promotion.

C. The department shall have a central administrative service office providing:

1. Data processing, accounting and budgeting, records management, publications, property control and personnel services and training.

2. A program to cross-train appropriate personnel to enable them to perform similar functions or comparable work for different administrative units in the department.

Sec. 2. Section 3-301, Arizona Revised Statutes, is amended to read:

3-301. Developing and adopting the program; advisory committee

A. The director may develop and adopt by rule an Arizona organic food certification program that shall meet the requirements of the organic foods production act of 1990 NATIONAL ORGANIC PROGRAM (7 CODE OF FEDERAL REGULATIONS PART 205) (P.L. 101-624, title XXI; 104 Stat. 3359, 3935; 7 United States Code sections 6501 through 6522) and the requirements of this article.

B. If the director establishes such a program, the director shall establish one or more advisory committees pursuant to section 3-106 to assist in developing the program.

Sec. 3. Repeal

Sections 3-302 through 3-305, Arizona Revised Statutes, are repealed.

Sec. 4. Renumber

Section 3-306, Arizona Revised Statutes, is renumbered as a new section

3-302.

1 Sec. 5. Section 3-367, Arizona Revised Statutes, is amended to read:
2 3-367. Private right of action

3 A. Except as provided in subsection B of this section, any person
4 having an interest which is or may be adversely affected may commence a civil
5 action in superior court on his THE PERSON'S own behalf:

6 1. Against any person, including this state and any political
7 subdivision of this state, who is alleged to be in violation of this article
8 or of an order, permit or rule adopted or issued pursuant to this article,
9 other than a de minimis violation. The court shall have jurisdiction to
10 enforce the provision, order, permit or rule and to apply any appropriate
11 civil penalty under section 3-370.

12 2. Against the director where there is alleged a failure of the
13 director to perform any act or duty under this article which is not
14 discretionary with the director. The court shall have jurisdiction to order
15 the director to perform such act or duty.

16 B. No action may be commenced in either of the following cases:

17 1. Before sixty days after the plaintiff has given notice of the
18 alleged violation to the department and to any alleged violator or if, within
19 the sixty days, the director begins and diligently performs the act or duty
20 sought to be compelled.

21 2. If the attorney general has commenced and is diligently prosecuting
22 an action before the department under section 3-369 or a civil action in the
23 superior court of this state to require compliance with the permit, order,
24 rule or provision of this article.

25 C. In any action under this section:

26 1. The director, if not a party, may intervene as a matter of right.

27 2. The plaintiff has the burden of proof.

28 D. The court, in issuing any final order in any action brought
29 pursuant to this section, may:

30 1. Award costs of litigation, including reasonable attorney and expert
31 witness fees, to any party whenever the court determines such award is
32 appropriate and, in addition, to the defendant in the case of a frivolous
33 action.

34 2. Provide for injunctive, or other equitable, relief or assess civil
35 penalties that could have been administratively assessed. Any monies
36 collected as civil penalties shall be deposited, pursuant to sections 35-146
37 and 35-147, in the state general fund.

38 E. This section shall not be construed to abrogate the provisions of
39 chapter 9, 1, ARTICLE 2 of this title.

40 Sec. 6. Section 3-607, Arizona Revised Statutes, is amended to read:

41 3-607. Annual licenses; revocation; fees

42 A. No person shall operate a milk distributing plant or a
43 manufacturing milk processing plant, engage in the business of
44 producer-distributor or producer-manufacturer, or engage in the business of
45 selling at wholesale milk or dairy products, or both, without a license. This
46 section does not require:

1 1. An Arizona dairy farm producing raw milk for sale to be processed
2 to secure a license to operate.

3 2. A retailer or wholesaler to secure a license from the division to
4 convert a pasteurized mix into frozen dessert.

5 B. Application for a license shall be in writing in such form as the
6 associate director prescribes and shall be accompanied by the required filing
7 fee. Upon receipt of an application the associate director or an authorized
8 representative shall examine the premises in which the applicant proposes to
9 do business, and if it appears that the applicant has complied with all
10 provisions of law, the license shall be issued.

11 C. After issuance of the first annual license, a license may be issued
12 upon inspection of the premises and payment not later than February 1 of each
13 year of the required fee. The inspection shall be made by the associate
14 director or an authorized representative to determine whether the premises
15 are maintained in compliance with law. A written report of the inspection
16 shall be filed in the division office. An annual license is valid for the
17 period beginning January 1 and ending December 31 of each year, and a license
18 not renewed on or before February 1 of each year shall be void.

19 D. ~~Except as provided in this subsection,~~ AN application for a license
20 to produce grade A milk for human consumption shall be made in the manner
21 prescribed by subsections A and B. ~~and~~ THE LICENSE shall be valid until
22 revoked for failure to comply with the provisions of this article relating
23 to the production of milk. THE ASSOCIATE DIRECTOR MAY SUSPEND A LICENSE
24 PENDING CORRECTION OF DEFICIENCIES THAT VIOLATE THIS ARTICLE. IF THE
25 IDENTIFIED DEFICIENCIES ARE NOT CORRECTED WITHIN A REASONABLE TIME AFTER THE
26 LICENSEE IS NOTIFIED, THE ASSOCIATE DIRECTOR MAY PROCEED TO REVOKE THE
27 LICENSE. Notice of A PENDING revocation shall be in writing, stating the
28 cause therefor, and setting a time during which the licensee may correct the
29 cause for revocation. If the cause for revocation is not corrected within
30 the time specified, the associate director, after a hearing and three days'
31 notice of intention, may revoke the license. The director shall review the
32 associate director's action on request of any person adversely affected by
33 the action. A person holding a permit issued by a governmental agency
34 operating outside of this state whose requirements are substantially the same
35 as the requirements of this state shall be deemed to have a permit LICENSE
36 meeting the requirements of this article, provided the facilities have first
37 been inspected and approved also by a resident Arizona inspector, if in the
38 opinion of the associate director such an inspection should be made. Any
39 expense incurred for such inspection shall be at the expense of the licensee.

40 E. Fees shall be paid as follows:

41 1. For a license or renewal of a license to operate a milk
42 distributing plant or business, fifty dollars.

43 2. For a license or renewal of a license to operate a manufacturing
44 milk processing plant, fifty dollars.

45 3. For a license or renewal of a license to engage in the business of
46 producer-distributor or producer-manufacturer, twenty-five dollars.

4. For a license or renewal of a license to engage in the business of selling at wholesale milk or dairy products, or both, twenty-five dollars.

F. The associate director or dairy inspectors are authorized to inspect premises affected by this article and located without the state, and they shall receive subsistence and travel expenses in the amount provided for state officers, which shall be paid to the inspector by the owner of the premises so inspected.

G. The provisions of this section shall not apply to the producer of raw milk.

Sec. 7. Section 3-1201, Arizona Revised Statutes, is amended to read:

3-1201. Definitions

In this chapter, unless the context otherwise requires:

1. "Aquaculture" means the controlled propagation, growth and harvest of aquatic animals or plants, including fish, amphibians, shellfish, mollusks, crustaceans, algae and vascular plants.

2. "Associate director" means the associate director of the division.

3. "Division" means the animal services division of the Arizona department of agriculture.

4. "Equine" means horses, mules, burros and asses.

5. "Livestock" means cattle, equine, sheep, goats and swine, except feral pigs.

6. "Poultry" means ~~chickens, turkeys, domesticated birds, game birds, fowl and waterfowl but does not include ratites~~ ANY DOMESTICATED BIRD, WHETHER LIVE OR DEAD, AND INCLUDES CHICKENS, TURKEYS, DUCKS, GEESE, GUINEAS, RATITES AND SQUABS.

7. "Range" means every character of lands, enclosed or unenclosed, outside of cities and towns, upon which livestock is permitted by custom, license or permit to roam and feed.

8. "Range livestock" means livestock customarily permitted to roam upon the ranges of the state, whether public domain or in private control, and not in the immediate actual possession or control of the owner although occasionally placed in enclosures for temporary purposes.

9. "Ratite" means ostriches, emus, rheas and cassowaries.

Sec. 8. Repeal

Section 3-1482, Arizona Revised Statutes, is repealed.

Sec. 9. Section 3-2151, Arizona Revised Statutes, is amended to read:

3-2151. Definitions

In this article, unless the context otherwise requires:

1. "Adulterated" shall apply to any poultry product under one or more of the following circumstances if:

(a) It bears or contains any poisonous or deleterious substance which may render it injurious to health, but in case the substance is not an added substance, such article shall not be considered adulterated if the quantity of such substance in or on such article does not ordinarily render it injurious to health.

1 (b) It bears or contains, by reason of administration of any substance
2 to the live poultry or otherwise, any added poisonous or added deleterious
3 substance other than one which is a pesticide chemical in or on a raw
4 agricultural commodity, a food additive or a color additive which may in the
5 judgment of the director or his THE DIRECTOR'S authorized representative make
6 such article unfit for human food.

7 (c) It is, in whole or in part, a raw agricultural commodity and such
8 commodity bears or contains a pesticide chemical which is unsafe within the
9 meaning of section 408 of the federal food, drug and cosmetic act, any food
10 additive which is unsafe within the meaning of section 409 of the federal
11 food, drug and cosmetic act or any color additive which is unsafe within the
12 meaning of section 706 of the federal food, drug and cosmetic act. An
13 article which is not otherwise deemed adulterated under this subdivision
14 shall nevertheless be deemed adulterated if use of the pesticide chemical,
15 food additive or color additive in or on such article is prohibited by rules
16 of the director in official establishments.

17 (d) It consists in whole or in part of any filthy, putrid or
18 decomposed substance or is for any other reason unsound, unhealthful,
19 unwholesome or otherwise unfit for human food.

20 (e) It has been prepared, packed or held under insanitary UNSANITARY
21 conditions whereby it may have become contaminated with filth or whereby it
22 may have been rendered injurious to health.

23 (f) It is in whole or in part the product of any poultry which has
24 died otherwise than by slaughter.

25 (g) Its container is composed in whole or in part of any poisonous or
26 deleterious substance which may render the contents injurious to health.

27 (h) It has been intentionally subjected to radiation, unless the use
28 of the radiation was in conformity with a regulation or exemption in effect
29 pursuant to section 409 of the federal food, drug and cosmetic act.

30 (i) Any valuable constituent has been in whole or in part omitted or
31 abstracted therefrom, or if any substance has been substituted, wholly or in
32 part therefor, or if damage or inferiority has been concealed in any manner,
33 or if any substance has been added thereto or mixed or packed therewith so
34 as to increase its bulk or weight, or reduce its quality or strength, or make
35 it appear better or of greater value than it is.

36 2. "Animal food manufacturer" means any person engaged in the business
37 of manufacturing or processing animal food derived wholly or in part from
38 carcasses or parts or products of the carcasses of poultry.

39 3. "Capable of use as human food" shall apply to any carcass or part
40 or product of a carcass of any poultry, unless it is denatured or otherwise
41 identified as required by rules prescribed by the director to deter its use
42 as human food, or it is naturally inedible by humans.

43 4. "Container" or "package" includes any box, can, tin, cloth, plastic
44 or other receptacle, wrapper or cover.

1 5. "Federal food, drug and cosmetic act" means the act so entitled,
2 approved June 25, 1938 (52 Stat. 1040), and acts amendatory thereof or
3 supplementary thereto.

4 6. "Federal poultry products inspection act" means the act so entitled
5 approved August 28, 1957 (71 Stat. 441), as amended by the wholesome poultry
6 products act (82 Stat. 791).

7 7. "Fresh" means any dressed or ready to cook poultry or poultry
8 product which has not been frozen.

9 8. "Frozen" means any dressed or ready to cook poultry or poultry
10 product which is in fact in a frozen state and which has been constantly
11 maintained at a temperature of thirty-two degrees Fahrenheit or lower.

12 9. "Immediate container" includes any consumer package, or any other
13 container in which poultry products, not consumer packaged, are packed.

14 10. "Intrastate commerce" means commerce within this state.

15 11. "Label" means a display of written, printed or graphic matter upon
16 any article or the immediate container, not including package liners, of any
17 article.

18 12. "Labeling" means all labels and other written, printed or graphic
19 matter upon any article or any of its containers or wrappers or accompanying
20 such article.

21 13. "Misbranded" shall apply to any poultry product under one or more
22 of the following circumstances, if:

23 (a) Its labeling is false or misleading in any particular.

24 (b) It is offered for sale under the name of another food.

25 (c) It is an imitation of another food, unless its label bears, in
26 type of uniform size and prominence, the word "imitation" and immediately
27 thereafter the name of the food imitated.

28 (d) Its container is so made, formed or filled as to be misleading.

29 (e) It purports to be or is represented as a food for which a
30 definition and standard of identity or composition has been prescribed by
31 rules of the director under section 3-2155 unless it conforms to such
32 definition and standard, and its label bears the name of the food specified
33 in the definition and standard and, insofar as may be required by such rules,
34 the common names of optional ingredients, other than spices, flavoring, and
35 coloring, present in such food.

36 (f) It purports to be or is represented as a food for which a standard
37 or standards of fill of container have been prescribed by rules of the
38 director under section 3-2155, and it falls below the standard of fill of
39 container applicable thereto, unless its label bears, in such manner and form
40 as such rules specify, a statement that it falls below such standard.

41 (g) It bears or contains any artificial flavoring, artificial
42 coloring, or chemical preservative, unless it bears labeling stating that
43 fact. To the extent that compliance with the requirements of this
44 subdivision is impracticable, exemptions shall be established by rules of the
45 director.

1 (h) It fails to bear on its containers, and in the case of nonconsumer
2 packaged carcasses if the director so requires directly thereon, as the
3 director may by rules prescribe, the official inspection legend and official
4 establishment number of the establishment where the article was processed.

5 14. "Official certificate" means any certificate prescribed by rule of
6 the director for issuance by an inspector or other person performing official
7 functions.

8 15. "Official device" means any device prescribed or authorized by the
9 director for use in applying any official mark.

10 16. "Official establishment" means any establishment as determined by
11 the division at which inspection of the slaughter of poultry or the
12 processing of poultry products is maintained.

13 17. "Official inspection legend" means any symbol prescribed by rule
14 of the director showing that an article was inspected for wholesomeness.

15 18. "Official mark" means the official inspection legend or any other
16 symbol prescribed by rule of the director to identify the status of any
17 article or poultry.

18 19. "Person" means any individual, partnership, corporation,
19 association or other business unit.

20 20. "Pesticide chemical", "food additive", "color additive" and "raw
21 agricultural commodity" shall have the same meanings as under the federal
22 food, drug and cosmetic act.

23 21. "Poultry" means any domesticated bird, whether live or dead, AND
24 INCLUDES CHICKENS, TURKEYS, DUCKS, GEESE, GUINEAS, RATITES AND SQUABS.

25 22. "Poultry product" means any poultry carcass, or part thereof, or
26 any product which is made wholly or in part from any poultry carcass or part
27 thereof, excepting products which contain poultry ingredients only in a
28 relatively small proportion or historically have not been considered by
29 consumers as products of the poultry food industry, and which are exempted
30 by the director from definition as a poultry product under such conditions
31 as the director may prescribe to assure that the poultry ingredients in such
32 products are not adulterated and that such products are not represented as
33 poultry products.

34 23. "Poultry products broker" means any person engaged in the business
35 of buying or selling poultry products on commission or otherwise negotiating
36 purchases or sales of such articles other than for his THE PERSON'S own
37 account or as an employee of another person.

38 24. "Processed" means slaughtered, canned, salted, stuffed, rendered,
39 boned, cut up or otherwise manufactured or processed.

40 25. "Renderer" means any person engaged in the business of rendering
41 carcasses or parts or products of the carcasses of poultry, except rendering
42 conducted under inspection or exemption under this chapter.

43 26. "Shipping container" means any container used or intended for use
44 in packaging the product packed in an immediate container.

1 Sec. 10. Section 3-2907, Arizona Revised Statutes, is amended to read:
2 3-2907. Licenses; fee; exemption

3 A. A person may not engage in any of the following activities relating
4 to aquaculture unless the person possesses a current valid license issued by
5 the division:

6 1. Aquaculture facility activities, including selling, trading,
7 displaying, purchasing, exporting, possessing, propagating and rearing live
8 aquatic animals or plants.

9 2. Transporting live aquatic animals to persons who are licensed to
10 resell, process or stock aquatic animals.

11 3. Processing facility activities, including cleaning, reshaping or
12 packing fresh or frozen aquatic animals or plants for distribution or resale.

13 4. Operating a fee fishing facility which permits the public to remove
14 aquatic animals by any harvesting method from a privately controlled body of
15 water as authorized by the direct or indirect payment of a fee.

16 B. This chapter does not apply to state or federal game and fish
17 agencies.

18 C. Each facility or transporter must be separately licensed with the
19 division including payment of the prescribed fee.

20 D. Each license issued under this section shall state the name and
21 business address of the licensee, the name and address of the person
22 designated as the licensee's agent to the division, the location of the
23 premises for which it is issued, other than a transporter, and any other
24 information deemed necessary by the director.

25 E. A licensee may not transfer or convey the license to any other
26 person or entity. The license is valid only for the named licensee and for
27 the particular premises identified on the license. If there is a transfer
28 or change in the ownership of a licensee or the premises identified on the
29 license, or a change in the licensee's agent, the licensee shall notify the
30 division within thirty days.

31 F. A license is valid for one year from the date prescribed by the
32 associate director. The license may be renewed by applying and paying the
33 required renewal fee at any time within thirty days before the license
34 expires. If a license expires, it may be renewed within ninety days after
35 expiration by paying an additional prescribed fee increment. A license that
36 has been expired for more than ninety days may not be renewed.

37 G. An application for an original or renewal license under this
38 section shall be submitted to the division together with the appropriate fee
39 on a form furnished by the department. An applicant shall furnish any
40 additional information that may be required.

41 H. Within fifteen days after receiving the application, the division
42 shall either issue or deny the license. The division shall issue a license,
43 in the name under which the applicant proposes to conduct business, to an
44 applicant that has satisfied the licensing procedures and requirements of
45 this article. If the applicant fails to meet the requirements for an
46 original or renewal license under this article, the associate director shall

1 notify the applicant by certified mail stating the reasons for the denial and
2 advising the applicant of the right to request a hearing. The applicant must
3 request the hearing in writing within thirty days after the date the notice
4 is mailed. The associate director shall schedule the hearing to be held
5 within thirty days after the request is received. If the record made at the
6 hearing discloses that the applicant meets the qualifications and other
7 requirements of this chapter, the hearing officer shall enter an order to
8 that effect and direct that the appropriate license be issued. If the
9 applicant is found to be unqualified or otherwise fails to meet the
10 requirements of this article, the hearing officer shall enter an order to
11 that effect.

12 I. The application for an original or renewal license shall be
13 accompanied by a license fee set by the director according to the cost of
14 administering this article, but not less than one hundred dollars. licensees
15 ~~shall maintain adequate records of gross sales and gross income necessary to~~
16 ~~determine the amount of the license fee. The licensee's records shall be~~
17 ~~open for inspection by the associate director or his agent during normal~~
18 ~~business hours.~~

19 J. A person who sells aquatic products at retail is exempt from the
20 requirements of this section unless the person engages in any of the
21 activities required to be licensed under subsection A.

22 Sec. 11. Section 44-1522, Arizona Revised Statutes, is amended to
23 read:

24 44-1522. Unlawful practices; intended interpretation of
25 provisions

26 A. The act, use, or employment by any person of any deception,
27 deceptive act or practice, fraud, false pretense, false promise,
28 misrepresentation, or concealment, suppression or omission of any material
29 fact with intent that others rely upon such concealment, suppression or
30 omission, in connection with the sale or advertisement of any merchandise
31 whether or not any person has in fact been misled, deceived, or damaged
32 thereby, is declared to be an unlawful practice.

33 B. The violation of chapter 19, article 1 of this title is declared
34 to be an unlawful practice and subject to enforcement under this article.

35 ~~C. The violation of section 3-303, subsection A, is declared to be an~~
36 ~~unlawful practice and subject to enforcement under this article.~~

37 ~~D. C. It is the intent of the legislature that, in construing the~~
38 ~~provisions of subsection A of this section, that the courts may use as a~~
39 ~~guide interpretations given by the federal trade commission and the federal~~
40 ~~courts to 15 UNITED STATES CODE sections 45, 52 and 55(a)(1) title 15,~~
41 ~~U.S.C.A. of the federal trade commission act.~~

APPROVED BY THE GOVERNOR APRIL 20, 2002.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 22, 2002.

Passed the House January 24, 2002,

by the following vote: 54 Ayes,

0 Nays, 6 Not Voting

[Signature]
Speaker of the House

Norman L. Moore
Chief Clerk of the House

Passed the Senate April 3, 2002

by the following vote: 29 Ayes,

0 Nays, 1 Not Voting

[Signature]
President of the Senate

Cherrin Billington
Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill was received by the Governor this

_____ day of _____, 20____,

at _____ o'clock _____ M.

Secretary to the Governor

Approved this _____ day of

_____, 20____,

at _____ o'clock _____ M.

Governor of Arizona

H.B. 2059

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State

this _____ day of _____, 20____,

at _____ o'clock _____ M.

Secretary of State

HOUSE CONCURS IN SENATE
AMENDMENTS AND FINAL PASSAGE

April 15, 2002,

by the following vote: 56 Ayes,

0 Nays, 4 Not Voting

[Signature]
Speaker of the House

Norman L. Moore
Chief Clerk of the House

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill was received by the Governor this

15 day of April, 2002

at 3:13 o'clock P M.

[Signature]
Secretary to the Governor

Approved this 20 day of

April, 2002,

at 3:30 o'clock P M.

[Signature]
Governor of Arizona

H.B. 2059

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State

this 22 day of April, 2002,

at 1:38 o'clock P M.

[Signature]
Secretary of State